COVID-19: PREMIUM PROCESSING FOR EMPLOYMENT PETITIONS SUSPENDED AND RELAXED I-9 VERIFICATION REQUIREMENTS

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Labor, Employment and Workplace Safety Alert

By: Brian Graham, Adriana Reyes, Rio J. Gonzalez

SUSPENSION OF PREMIUM PROCESSING

On March 20, 2020, United States Citizenship and Immigration Services ("USCIS") announced the immediate and temporary suspension of premium processing for all Form I-129 and I-140 petitions due to COVID-19. Specifically, any premium processing requests that were postmarked before March 20, but not yet accepted by USCIS, will be returned with the $1,440 filing fee. Further, USCIS has indicated they will refund premium processing fees for cases already pending where they cannot honor the premium processing request.

Importantly, the suspension expands upon USCIS's previous announcement temporarily suspending premium processing for FY2021 cap-subject H-1B petitions. The temporary suspension includes new premium processing requests for all H-1B petitions, including H-1B cap-subject petitions for FY2021, petitions from previous fiscal years, and all H-1B petitions that are exempt from the cap. The temporary suspension does not have an end-date.

RELAXED FORM I-9 VERIFICATION REQUIREMENTS

Due to precautions associated with COVID-19, the Department of Homeland Security ("DHS") has relaxed verification requirements for Form I-9 documents. For employers with employees taking physical proximity precautions due to COVID-19, employers will temporarily no longer be required to review the employee's identity and employment authorization documents in the employee's physical presence. However, employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2.

DHS has instructed employers that they should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 "additional information" field once physical inspection takes place after normal operations resume. Once the documents have been physically inspected, the employer should add "documents physically examined" with the date of inspection to the Section 2 "additional information" field on the Form I-9, or to Section 3 as appropriate. The relaxed requirements may be implemented by employers for a period of 60 days from March 20, 2020 or within three business days after the termination of the National Emergency, whichever comes first.

Importantly, the relaxed rules apply to those working remotely or otherwise not able to appear at the worksite due to COVID-19 protocols. If a new hire is physically present at the worksite, the existing requirements on the Form I-

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9 apply and in-person inspection of the documents by the employer or its designated agent are still required. In other words, the relaxation of the in-person inspection only applies if the new employee is not present at the worksite. DHS has indicated that it reserves the right to evaluate compliance on a case-by-case basis.

RELAXED SIGNATURE REQUIREMENT ON BENEFIT FORMS

In light of COVID-19 USCIS will begin accepting all benefit forms and documents with reproduced original signatures, including the Form I-129, Petition for Nonimmigrant Worker, for submissions dated March 21, 2020, and beyond. Specifically, a document may be scanned, faxed, photocopied, or similarly reproduced provided that the copy is of an original document containing an original handwritten signature, unless otherwise specified.

Importantly, individuals or entities that submit documents bearing an electronically reproduced original signature must also retain copies of the original documents containing the wet signature. USCIS has indicated that failure to produce an original document containing the wet signature during a subsequent audit may negatively affect the adjudication of the immigration benefit. USCIS has indicated this relaxed requirement is intended to last for the duration of the National Emergency.

KEY CONTACTS



BRIAN GRAHAM
PARTNER

AUSTIN
+1.512.482.6828
BRIAN.GRAHAM@KLGATES.COM



ADRIANA REYES
PARTNER

AUSTIN
+1.512.482.6830
ADRIANA.REYES@KLGATES.COM



RIO J. GONZALEZ
COUNSEL

MIAMI
+1.305.539.3346
RIO.GONZALEZ@KLGATES.COM

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